



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 04.01.2022

Pronounced on : 17.03.2022

WEB COPY

CORAM:

THE HONOURABLE MRS.JUSTICE S. SRIMATHY

W.P(MD) .Nos.18325 of 2015 and 16331 of 2016 and
M.P(MD) .Nos.1 to 3 of 2015 in W.P(MD) .Nos.18325 of 2015
and WMP(MD) .No. 11934 of 2016 in WP(MD) .No.16331 of 2016 and
Cont.P(MD) .No.1695 of 2015

J. Maria Satho Thilakaraj : Petitioner in W.P.No.18325/2015

P.Thangaraj : Petitioner in W.P.No.16331/2016

..VS..

1.The Director General of Police,
Santhome,
Chennai.

2.The Deputy Inspector General of Police,
Trichy Range,
Trichy.

3.The Superintendent of Police,
Pudukkottai District,
Pudukkottai.

4.B.Philip Xavier

5.Sivakumar Respondents in W.P.No.18325/2015

1.The Principal Secretary to Government,
Home (Police-III) Department,
Secretariat, Chennai -9.

2.The Director General of Police,
Chennai.

3.The Deputy Inspector General of Police,
Tirunelveli Region,
Tirunelveli.

4.The Superintendent of Police,
Kanyakumari District, Nagercoil.



5.Balasubramanian

Respondents in W.P.No.16331/2016

Cont.P(MD) .No.1695 of 2015

J. Maria Satho Thilakaraj

: Petitioner

..vs..

1. Sathiyamoorthy,
Deputy Inspector General of Police,
Trichy Range,
Trichy.

2.Uma,
Superintendent of Police,
Pudukkottai District,
Pudukkottai.

: Respondents

PRAYER in WP(MD).No.18325 of 2015 : Writ Petition filed under Article 226 of the Constitution of to issue a Writ of Certiorari to call for the records pertaining to the order passed by the 2nd respondent in his proceedings in RO.No.210/2015 C.No.A1/4697/2015, dated 06.10.2015 in so far as the 4th and 5th respondents are concerned and quash the same and direct the respondents to promote the petitioner as Sub-Inspector of Police and confer all the consequential benefits.

PRAYER in WP(MD).No.16331 of 2016 : Writ Petition filed under Article 226 of the Constitution of to issue a Writ of Certiorarified Mandamus to call for the records of the 4th respondent in Na.Ka.No.A4/21453/2016, dated 20.07.2016 and quash the same and consequently directing the 1st respondent to include the petitioner's name in the "C" list to the top of the 5th respondent's name published in the G.O.Ms.No.923, dated 06.12.2012.

PRAYER in Contempt P(MD).No.1695 of 2015: This petition is filed to punish the respondents for wilful disobedience of the order passed by this Court in M.P(MD).No.2 of 2015 in WP(MD).No.18325 of 2015, dated 09.10.2015.

For Petitioner in WP(MD). No. 18325 of 2015

: Mr. V. Panneer Selvam

For Petitioner in WP(MD). No. 16331 of 2016

: Mr. H. Velavadas

For R1 to R3 in WP(MD). No. 18325 of 2015

For R1 to R4 in WP(MD). No. 16331 of 2016

: Mr. D. Sachikumar

Additional Government Pleader



For Petitioner in Contempt Petition : Mr. V. Panneer Selvam

For respondents in Contempt Petition : Mr. D. Sachikumar
Additional Government Pleader

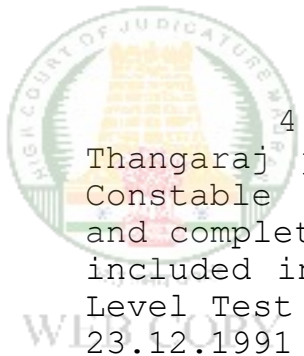
C O M M O N O R D E R

WEB COPY

W.P. (MD).No.18325 of 2015 is filed to quash the order passed by the 2nd respondent in his proceedings in RO.No.210/2015 C.No.A1/4697/2015, dated 06.10.2015 in so far as the 4th and 5th respondents are concerned and direct the respondents to promote the petitioner as Sub-Inspector of Police and confer all the consequential benefits.

2. W.P(MD).No.16331 of 2016 is filed to quash order of the 4th respondent in Na.Ka.No.A4/21453/2016, dated 20.07.2016 and consequently direct the 1st respondent to include the petitioner's name in the "C" list to the top of the 5th respondent's name published in the G.O.Ms.No.923, dated 06.12.2012.

3. The petitioner in W.P.(MD).No.18325 of 2015, namely Mario Satho Thilakaraj was selected by the Tamil Nadu Uniform Service Recruitment Board as Grade -II Police Constable on 28.02.1995. After training for six months he was posted at 7th Battalion at Palani in September 1995, then transferred to Armed Reserve Police, Pudukkottai in May 1998. The contention of the petitioner is as per seniority the petitioner was promoted as Grade-I Police Constable vide proceedings dated 24.01.2007 with effect from 01.06.2005. Thereafter, promoted as Head Constable on 06.12.2007. The next avenue of promotion to the post of Sub Inspector of Police for the promotion to the post of Sub Inspector of Police for the year 2014, "C" list was prepared on 15.10.2014 and in that list the petitioner's name was in S.No.6. The contention of the petitioner that from the said list upto S.No.5 the promotion was effected and next person to be promoted as Sub Inspector of Police as per the seniority is the petitioner. In the mean while the respondents 4 and 5 working as Buglers trying to get promotion by-passing seniority. Hence, the petitioner submitted a representation to the third respondent stating the petitioner is senior and requested to promote him as Sub Inspector of Police as per seniority. The respondents vide proceedings dated 14.08.2015 stating that his objection as if the respondents 4 and 5 are placed above of his name is totally wrong and they are considered as juniors and moreover the respondents 4 and 5 were send for training only on 13.03.2002 and they will be given promotion only by proceedings dated 12.03.2010. However, to the shock and surprise of the petitioner the respondents 4 and 5 were promoted as Sub Inspector of Police by the proceedings dated 06.10.2015 along with 7 others. Aggrieved over W.P. (MD). No. 18325 of 2015 is filed.



4. The petitioner in WP. (MD).No. 16331 of 2016, namely P. Thangaraj joined in Tamil Nadu Police Service as Grade -II Police Constable at Tirunelveli on 12.09.1986. After training, probation and completion of Departmental test the petitioner is eligible to be included in the "C" list and he secured first rank in the District Level Test for promotion panel of the Grade -II, Police Constable on 23.12.1991 and he was promoted as Grade -I Police Constable on 18.11.1993 then as Head Constable on 09.12.1997. As per the proceedings of the 3rd respondent in No.D0/8297/97-B4 the petitioner's name was included as Head Constable "A" List on 09.12.1999 along with some of his juniors. The contention of the petitioner is that the third respondent did not consider his promotion post of Sub Inspector because the Sub Inspector Promotion list was prepared in the jurisdiction which includes Thirunelveli, Tuticorin and Kanyakumari District. Even in the year 2000 the petitioner name was not considered. The Educational Qualification for the Police Constables were read and write for Tamil Nadu Special Police. But Armed Reserved Police basic education qualification is 7th standard and later on, it was changed to SSSL pass. The Grade II Police Constables with SSLC Qualification were given promotion as Grade-I Police Constables on passing of certain course as Grade -II Police Constables. Another way of selection is Grade -II Constables with 10 years of service and another is five years service for Head Constable. Thereafter, Constables served as 25 years or 10 years of service of Head Constable are eligible for Sub Inspector Police. The contention of the petitioner is the 5th respondent joined the Police service in the year 1977 as Bugler of Police Department, then, he was confirmed in the regular police in the year 1992. The 5th respondent filed Writ Petition before this Court in W.P.(MD).No.3536 of 2011 to recommend his name for promotion as of Inspector of Police in the year 2012 and based on the order the 5th respondent's name was recommended and the first respondent passed G.O.Ms.No.923 dated 06.12.2012 which is totally violation of promotion panel prepared by the respondents. Since the petitioner was affected he had challenged the impugned order passed by the fourth respondent in Na.Ka.No.A4/21453/2016, dated 20.07.2016. The petitioner has given the following service particulars of the petitioner and the 5th respondent:

Thangaraj	Balasubramanian
Grade-II on 12.09.1986	Regular P.C on 04.09.1992
Grade-I Naik on 18.11.1993	Grade-I on 08.04.1996
Head Constable on 09.12.1997	Head Constable on 28.10.2004
S.I of Police on 28.04.2008	Special Sub Inspector of Police rejected on 23.11.2010. After that filed Writ Petition in W.P.No.3536 of 2011



The petitioner submitted a representation dated 30.04.2006 then the fourth respondent passed Na. Ka. No. A4 / 21453 / 2016, dated 20.07.2016. Aggrieved over W.P.(MD).No. 16331 of 2016 is filed.

5. The respondents have filed counter in WP(MD).No.18325 of 2015 and has stated that the petitioner was appointed as Grade-II Police Constable on 01.03.1995 and has subsequently, promoted as stated in his affidavit. As per Rule 3(b)(i)(ii) of the Special Rules, Promotion from the rank of Head Constable to the post of Sub-Inspector of Police (Armed Reserve) shall be made from the list of qualified candidates suitable for promotion prepared in the Range level vacancy by the Range Promotion Board consisting with members of the Superintendent of Police of the districts concerned in range and approved by the Deputy Inspector General of Police of range concerned, promotion as Sub Inspector of Police (Armed Reserve) will be given every year if vacancy arises. The petitioner's name along with respondents 4 and 5 were considered for Pudukkottai District in the year 2014. The Trichy Range promotion Board had considered all 17 seniors both in appointment and date of promotion as Head Constables from Trichy District and 4 Head Constable in Pudukkottai District in Trichy Range vacancy as on 01.01.2014, 17 Head Constables were included in the promotion panel for the year 2014 and accordingly, 17 Head Constables (Armed Reserve) were included in the "C" List of Head Constables / SSIs (Armed Reserve) in the proceeding of the 2nd respondent dated 20.10.2014. In the "C" list in the year 2014 the name of the petitioner or the respondents 4 and 5 were not included. The respondents 4 and 5 were appointed as Bugler Police Constable on 24.12.1993 and 09.01.1994 respectively were subsequently sent for condensed course for conversion as Grade II Police Constable and on successful completion of their course they were converted into Grade -II Police Constables with effect from 02.04.2002 as per the orders of the first respondent in his memo R.C.No.18008/NGBVII(2)/2001, dated 13.03.2002. At this stage, the petitioner was upgraded as Grade II Police Constable on 01.03.2005 was promoted as Head Constable from 07.12.2007. But the respondents 4 and 5 were served as Grade II Bugler PC on that date and hence, the petitioner claims that he is senior in the rank of HC than the respondents 4 and 5. The Hon'ble High Court of Madras Madurai Bench passed an order in W.A. Nos. 539 to 541 of 2009 against the Judgment delivered on 15.11.2007 in W.P.Nos.1783 to 1786 of 2007 filed by one R. Eswaramurthy and three others. The operative portion of the Judgment reads as follows:

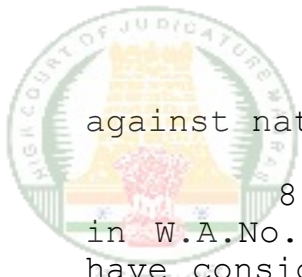
"A reading of category No.7 of Rule 2 reflects that Bugler Constables are also constable and therefore, they cannot be treated differently from the Gr. II PCs. May be true that the method of appointment, mode of training and period of training are different for directly recruited Grade-II PCs and Bugler Constables. But that will not



make any difference between these two posts, unless there is such distinction made in the service rules. As we have already stated, we do not find any such provision in the rules making such distinction. Therefore, the service rendered by the respondents as Bugler Constables should be equated to the service rendered by any other Grade II PCs, recruited directly and such service should be taken into account for the purpose of promoting them as Grade-I PCs in terms of the Government order."

6. In order to implement the above Hon'ble High Court order and as per the instructions of the first respondent in R.C. No. 199044 / NGB. III(2) / 2009, dated 13.02.2010 and the power vested with the third respondent in G.O.Ms.No.15 Home (Pol.V) Department, dated 07.01.2010, the services of Grade-II Bugler Police Constable of the respondents 4 and 5 were reckoned with effect from the date of appointment as Bugler Constable instead of conversion as Grade II PC on 02.04.2002 and upgraded as Grade -I Bugler Police Constable on 24.12.2003 and 09.01.2004 respectively and on completion of five years of service they were upgraded as Bugler Head Constable from 24.12.2008 & 09.01.2009 respectively. The Grade-I Police Constable and the Head Constable promotions are District Level, the Head Constable to Sub Inspector of Police (Armed Service) is Range Level and which will be considered by the Range Promotion Board.

7. The criteria for consideration as per Rules 3(d) of Special Rules to include in the "C" list of Head Constables (Armed Reserve) fit for promotion of Sub Inspector of Police (Armed Reserve) is, must have completed a total service of 7 years and must have served as Head Constable for a period of not less than four years on the crucial date of 10th April of every year. Accordingly, 10 eligible Head Constables were included and in which the petitioner, the respondents 4 and 5 were considered. But the Trichy Range Promotion Board had considered and decided to include 4 Senior Head Constables of Pudukottai District along with 13 Senior Head Constables of Trichy District in "C" List for year 2014 for the existing 17 vacancies in Trichy Range as on 01.04.2014. The petitioner and the respondents 4 and 5 were not included in the year 2014. In the year 2015 the petitioner and the respondents 4 and 5 were considered. It was decided that the Trichy Range seniority if prepared based on the date of promotion as Head Constable, the Grade II PCs appointed in the year 1995 and 1997 who got promoted as HC in the existing vacancies of their respective districts in the year 2007 will be included in the "C" list for the year 2015, but 7 HCs who were appointed in the year 1993 and 2 HCs appointed in year 1993, 2 HCs who were appointed in the year 1994 and not promoted as HC earlier than the petitioner of 1995 batch and other HC of 1997 batch for want of vacancies in their respective districts, the seniority and promotion opportunity of these seniors will be affected which is



against natural justice.

8. The Board in order to implement the order of this Court in W.A.No.539 to 541 of 2009 and in order to avoid contempt they have considered and recommended to include the name of the 7 senior Head Constables of Trichy District who were appointed in the feeder category in the year 1988 and 1993 as I. Senior No. 1 to 7 and recommended to include the name of the two senior Head Constables of the respondents 4 and 5 of Pudukkottai who were appointed as Grade-II, Bugler Constable in the year 1993 and 1994 earlier than the petitioner in S.Nos.8 and 9 in the "C" list of HCs fit for promotion as Sub Inspector of Police for the year 2015 for the year 2015 for the existing vacancies in Trichy Range as on 01.01.2015.

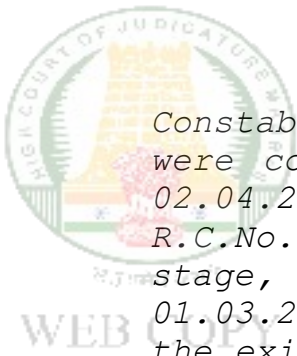
9. The respondents denied the contention of the petitioner. It is informed that not only the Bugler HCs of 4 and 5 respondents all 7 HCs of the Trichy District, who were included in the "C" list fit for promotion in the year 2015 placed in S. Nos. 1 to 7 are Seniors than the petitioner in appointment as Grade-II Police Constables and not promoted as Head Constable earlier than the petitioner and not promoted as Head Constable earlier. The preparation of "C" list was also approved vide order dated 16.09.2015 and necessary promotion orders have been issued by the second respondent vide order dated 06.10.2015. Accordingly, all the Head Constables including the respondents 4 and 5 have issued charge as Sub Inspector of Police (Armed Reserve).

10. In the Writ Petition in W.P(MD).No.16331 of 2016 the petitioner was appointed as Grade-II Police Constable on 12.09.1986 and the 5th respondent was appointed as Bugler Constable on 02.08.1977 and he was converted as Grade -II, Police Constable in the month of during May 1981. The respondents have filed counter for the WP(MD). No. 16331 of 2016.

11. Heard Mr. V. Panneer Selvam, the Learned Counsel appearing for the petitioner in WP(MD). No. 18325 of 2015, Mr. H. Velavadas the Learned Counsel appearing for the petitioner in WP(MD). No. 16331 of 2016 and Mr. D. Sachikumar, the Learned Additional Government Pleader appearing for the respondents and perused the materials available on record.

12. The contention of the respondents are that the respondents 4 and 5 were brought under the regular police constables after the condensed course and it has been stated in the counter as under:

"5. It is submitted that the averment made in para-3 by the petitioner is not correct. It is submitted that though the 4th and 5th respondents who were appointed as Bugler PCs on 24.12.1993 and 09.01.1994 respectively were subsequently sent for condensed course for conversion as Grade. II Police

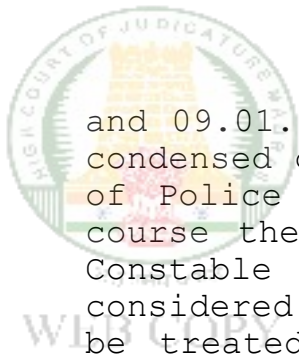


Constable and on successful completion of their course they were converted as Gr. II Police Constable with effect from 02.04.2002 as per orders of the first respondent in his memo R.C.No.18008/NGB VII (2) / 2001, dated 13.03.2002. At this stage, the petitioner who was upgraded as Gr. I PC on 01.03.2005 was promoted as Head Constable from 07.12.2007 in the existing vacancy in Pudukkottai district. But, 4th and 5th respondents were served as Gr. II Bugler PC on that date and hence, the petitioner claims that he is senior in the rank of HC than the 4th and 5th respondents."

13. The Learned Government Advocate relied on W.A.Nos.539 to 541 of 2009 wherein it is stated that the Bugler Constable is eligible to Grade-II Police Constable. The respondents have also admitted because of the order passed by this Court in W.A.Nos.539 to 541 of 2009 the respondents 4 and 5 were brought under "C" list and granted promotion. But this stand of the respondents was opposed by the petitioner stating that the said order was considered by the subsequent Division Bench in U.Barkath in W.A.No.2475 of 2018. This Court vide order dated 30.08.2019 had held that the three categories of police constables, namely Bugler Constable, Band Constable and Regular Constable are different, where the educational qualifications are different and the nature of the training is also different and they cannot be considered on par and has held that the judgement rendered in W.A. Nos. 539 to 541 of 2009 as *per incuriam*. The contention of the petitioner in WP(MD)No.18325 of 2015, the said Tr. B. Philip Savior and Tr. D. Sivakumar were appointed under the compassionate appointment as "Bugler Constables". The Recruitment Rules followed for recruiting Police Constable Grade II and the Bugler Police Constables are different. The relevant portion of the judgment rendered in W.A.No.2475 of 2018 dated 30.08.2019 is extracted hereunder:

"23. We are afraid that the said judgment is clearly a *Per Incurium*. The said judgment does not take into account the provisions under which they are appointed. It also does not give any reason as to why the posts should be equated. It is well settled that decisions should be treated as *per incurium* when it is given in ignorance of the terms of terms of a statute or of a rule having the force of the statute. The order delivered without argument, without reference to the relevant provisions of the Act and without any citation on authority is *per incurium*."

14. On perusal of the records it is seen that the petitioner is the direct recruit as Police Constable Grade II on 28.02.1995. The respondents 4 and 5 are recruited as Bugler Constable on 24.12.1993



and 09.01.1994 respectively. The respondents 4 and 5 have undergone condensed course in order to convert them to the regular main stream of Police Constables Grade II. After completion of the condensed course the respondents 4 and 5 were converted to Grade-II, Police Constable with effect from 02.04.2002. This Court is of the considered view that the petitioner and the respondents 4 and 5 can be treated on par as Police Constable Grade II, only after the respondents 4 and 5 have completed the condensed course. If that is so then the respondents 4 and 5 can be considered on par from the date of completion of the condensed course 02.04.2002. But prior to the condensed course the respondents 4 and 5 was only Bugler Constables, then they cannot be considered on par with the regular Police Constables. This Court is of the considered view that after completion of condensed course the respondents 4 and 5 cannot be granted the post of Grade II Constable from the date of original appointment i.e. 1993 and 1994, but they can be granted Grade II Constable from the date of completion of course i.e. from 2002 onwards. If that is so then the petitioner is the senior since he was recruited as Grade II in the year 1995 and the respondents 4 and 5 were recruited Grade II from 2002.

15. The petitioner in W.P. (MD) No. 16331 / 2016, P. Thangaraj was appointed as 12.09.1986. The 5th respondent was appointed as Bugler Constable on 02.08.1977 and was converted as Grade II Police Constable 04.09.1992. For the reasons stated supra the petitioner is senior at the time of appointment as Grade II Police Constable since his date of appointment as Grade II Police Constable is 12.09.1986 and the 5th respondent Balasubramanian is considered as Grade II Police Constable after completion of condensed course from 04.09.1992. It is stated that the said Balasubramanian had attained superannuation.

16. Therefore, following the subsequent Division Bench order in W.A.No.2475 of 2018 dated 30.08.2019, this Court is of the considered view that the Bugler Constables cannot be considered on par with the regularly recruited Grade -II Constable. Hence, the impugned orders are set aside and the official respondents are directed to redraw the seniority list and directed to grant promotion to the petitioner with consequential monetary benefits.

17. This Court has granted interim stay in M.P. (MD) No. 2 / 2015 in W.P.(MD) No. 18325 of 2015. Since the respondents have not obeyed the order the petitioner has preferred contempt in Cont. P. (MD) No. 1695 / 2015. Since this Court has passed the final order as stated supra, the said Contempt Petition is closed.



18. For the reasons stated supra, the Writ Petitions W.P. (MD) No. 18325 of 2015 and W.P.(MD) No. 16331 of 2016 are allowed. Cont. P. (MD) No. 1695 / 2015 is closed. No costs. Consequently, the connected Miscellaneous Petitions are closed.

Sd/-

Assistant Registrar (CS-I)

// True Copy //

/ /2022

Sub Assistant Registrar(CS)

trp

To

1.The Director General of Police,
Santhome, Chennai.

2.The Deputy Inspector General of Police,
Trichy Range, Trichy.

3.The Superintendent of Police,
Pudukkottai District, Pudukkottai.

4.The Principal Secretary to Government,
Home (Police-III) Department,
Secretariat, Chennai -9.

5.The Deputy Inspector General of Police,
Tirunelveli Region, Tirunelveli.

6.The Superintendent of Police,
Kanyakumari District, Nagercoil.

+1 CC to M/s.H.VELAVADHAS, Advocate (SR-12768[F] dated 17/03/2022)

W.P(MD) .Nos.18325 of 2015 and 16331 of 2016 and
M.P(MD) .Nos.1 to 3 of 2015 in W.P(MD) .Nos.18325 of 2015
and WMP(MD) .No. 11934 of 2016 in WP(MD) .No.16331 of 2016 and
Cont.P(MD) .No.1695 of 2015
17.03.2022

RD(25.03.2022) 10P 8C